

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 634 of 2003**

- Manoj Kumar, S/o Bharat LalYadav, aged about 23 years, Resident of Aditya Nagar, Durg, Tehsil and District Durg, C.G.

----Appellant**Versus**

- State of Chhattisgarh

---- Respondent

For Appellant	Shri P.K. Dhurandhar, Advocate.
For State	Shri Shreshta Gupta, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

22/10/2021

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24.04.2003 passed by the Special Judge and Additional Sessions Judge, Durg, District Durg, C.G. in Special Case No.92/2002, whereby the appellant stands convicted for the offence under Section 354 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.
2. Case of the prosecution, in brief, is that on the date of incident i.e. 28.03.2002 at about 3:00 pm, prosecutrix was alone in her home. At that time, accused/appellant came there with an intent to outrage her modesty and to humiliate her, caught hold of her waist and threatened her. On this, she raised hue and cry and hearing her voice, neighbours (PW-7 Shakun Bai & PW-3 Noni Bai) came there

and upon seeing them, accused/appellant ran away from there. Thereafter, prosecutrix narrated the incident to her father. Then, on the next day, she went to the police station and lodged written report Ex.P-2 against the accused/appellant and on the basis of written report, FIR Ex.P-1 was registered against the appellant. Prosecutrix was medically examined by PW-5 Dr. Lal Mohammad vide Ex.P-6 wherein he noticed no injury on the person of the prosecutrix.

4. During investigation, Caste Certificate Ex.P-5 of prosecutrix was seized vide Ex.P-4. Spot Map Ex.P-3 was prepared and accused/appellant was arrested on 29.03.2002 vide Ex.P-7. Statements of witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Sections 452, 354, 506 & 323 of Indian Penal Code and under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'). The trial Court framed the charge under Sections 354 of Indian Penal Code read with 3 (1) (xi) of the Act. The trial Court framed the charges under Sections 452, 354, 506-B, 323 of IPC and Section 3 (1) (xi) of the Act against the appellant which were denied by him and he prayed for trial.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses i.e. PW-1 Poshan Singh, PW-2 Prosecutrix, PW-3 Noni @ Rukhmani, PW-4 Jhumaklal, PW-5 Dr. Lal Mohammad, PW-6 Sanjay Somawar, PW-7 Shakun Bai and PW-8 B.L. Kurre, DSP. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence

and false implication. However, no witness was examined by him in his defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.
5. Learned counsel for the appellant submits that the impugned judgment is *per se* illegal and bad in law. He also submits that there are material contradictions and omissions in the statements of the prosecutrix and other witnesses. No cogent evidence is available on record against the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the said charge.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the offence under Section 354 of IPC, considering the fact that the incident took place around 19 years ago, the appellant was a young offender of 23 years at the relevant time and he has no criminal antecedent, he has already remained in jail for 2 days, in these circumstances, the accused be sentenced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. Heard learned counsel for the parties and perused the material available on record.
8. PW-1 Prosecutrix specifically and categorically stated in her

deposition that on 28.03.2002 at about 3:00 pm, while she was alone in her home, at that time accused/appellant came there and told her to switch on the electric line. When she was doing the same, appellant with an intent to outrage her modesty and to humiliate her, caught hold of her waist and threatened her. On this, she raised hue and cry, then appellant left her and gave her Rs.10/- for watching movie but she refused the same. On hearing her voice, her neighbours (PW-7 Shakun Bai & PW-3 Noni Bai) came there and upon seeing them, accused/appellant ran away from there. Thereafter, she narrated the incident to her father. Then, on the next day, she went to the police station and lodged written report Ex.P-2 against the accused/appellant and on the basis of written report, FIR Ex.P-1 was registered against the appellant.

9. PW-3 Noni Bai @ Rukmani, neighbour of the prosecutrix, has proved this fact that on the date of incident she heard the hue and cry of the prosecutrix. Thereafter, she came out from her house and asked the prosecutrix, then prosecutrix told her that the appellant had caught her and outraged her modesty. This witness has supported the prosecution case.
10. PW-4 Jhumaklal, father of the deceased, has stated that the prosecutrix told him about the incident on the same day when he returned from his duty.
11. PW-7 Shakun Bai, neighbour of the deceased, has not specifically stated anything about the incident.
12. PW-1 Poshan Singh, Head Constable, stated in his deposition that on the basis of written complaint Ex.P-1, he lodged the FIR Ex.P-2.

13.PW-5 Dr. Lal Mohammad, medically examined the prosecutrix vide Ex.P-6 and found no sign of injury on the person of the prosecutrix. He has duly proved the said report.

14.PW-6 Sanjay Somawar, Tehsildar, had issued the caste certificate of the prosecutrix Ex.P-5.

15.PW-8 B.L, Kurre, Deputy Superintendent of Police, seized caste certificate of the prosecutrix vide Ex.P-5, sent the prosecutrix for medical examination vide Ex.P-6, recorded the statement of the witnesses and arrested the accused Vide Ex.P-7 and duly proved the same.

16. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 28.03.2002, the appellant had caught the prosecutrix with an intent to outrage her modesty, caught her waist and also threatened her. The prosecutrix has remained firm during her cross-examination and her statement is also supported by PW-3 Noni Bai @ Rukmani & PW-4 Jhumaklal. No any evidence has been adduced or reason shown by the appellant for his false implication in this crime.

17. It is true that no physical injury was found on the body of the prosecutrix as per Ex.P-6 but for the purpose of committing offence under Section 354 of IPC, injury on the body of the prosecutrix is not necessary. Also, FIR Ex.P-2 was lodged against the appellant and proved by the prosecutrix. There is no reason to disbelieve the statements of the prosecutrix, PW-3 Noni Bai @ Rukmani & PW-4 Jhumaklal.

18. From the above, the offence alleged under Section 354 of the Indian Penal Code is proved against the appellant and, therefore, he has

rightly been convicted thereunder by the trial Court.

19. As regards the sentence under Section 354 of IPC, as per Criminal Law (Amendment) Act, 2013 which came into force with effect from 03.02.2013, the minimum sentence prescribed under Section 354 of IPC is one year and the maximum is 5 years with fine as well. However, the present incident took place in the year 2002 i.e. prior to the amendment and at that time the aforesaid offence was punishable with imprisonment of either description for a term which may extend to two years or with fine, or with both. In the present case, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 19 years ago, that at the time of incident accused/appellant was a young offender of 23 years and at present he must be 42 years of age, the fact that he has already remained in jail for 2 days, keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that the fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending the accused/appellant back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him and the fine of Rs.1,000/- imposed by the trial Court is enhanced to Rs.8,000/- and likewise the compensation amount of Rs.1,000/- payable to the prosecutrix is also enhanced to Rs.5,000/-. If the fine amount is not deposited by the accused/appellant within three months from today, he shall have to suffer additional simple imprisonment for four months.

20. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354 of IPC, he is sentenced to the period already undergone by him. However, the fine amount of Rs.1,000/- imposed by the trial Court is enhanced to Rs.8,000/-. In default of payment of fine within three months from today, the appellant shall have to undergo additional simple imprisonment for four months. Out of the total fine of Rs.8,000/-, a sum of Rs.5,000/- shall be payable to the prosecutrix as compensation by the trial Court after due verification. The fine amount deposited by the appellant and the compensation amount already paid to the prosecutrix shall be adjusted accordingly.

21. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh